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Attorneys for Plaintiff  
VERIGY US, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VERIGY US, INC, a Delaware Corporation

Plaintiff,

vs.

ROMI OMAR MAYDER, an individual;  
WESLEY MAYDER, an individual; SILICON  
TEST SYSTEMS, INC., a California Corporation;  
and SILICON TEST SOLUTIONS, LLC, a  
California Limited Liability Corporation,  
inclusive,

Defendants.

Case No. C07 04330 RMW (HRL)

**DECLARATION OF  
MELINDA MORTON IN SUPPORT OF  
VERIGY'S MOTION FOR PROTECTIVE  
ORDER RE REQUESTS FOR  
ADMISSION PROPOUNDED BY  
DEFENDANTS**

Date: June 17, 2008

Time: 9:00 a.m.

Ctrm.: 2

Judge: Hon. Howard R. Lloyd

Complaint Filed: August 22, 2007

Trial Date: None Set

**PUBLIC VERSION OF HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY**  
**DOCUMENT SUBMITTED UNDER SEAL**

1 I, Melinda M. Morton, declare as follows:

2 1. I am an attorney licensed to practice law before all of the courts of the State of  
3 California. I am a partner in the law firm of Bergeson, LLP, counsel of record for plaintiff Verigy  
4 US, Inc. ("Verigy") in the above-captioned action. I have personal knowledge of the facts set  
5 forth in this declaration, and, if called to do so, I could and would competently testify thereto.

6 2. I submit this declaration in support of Verigy's motion for protective order  
7 relieving Verigy of the obligation to respond to the second set of requests for admission  
8 propounded by defendants.

9 3. Attached hereto as Exhibit A is a true and correct copy of the Court's Minute  
10 Order, dated March 14, 2008. At the March 14, 2008 Case Management Conference, the Court  
11 gave each side an opportunity to list what discovery it felt was needed between March 14, 2008  
12 and the next scheduled case management conference on May 23, 2008. The Court granted both  
13 sides' requests as to the discovery requested. Defendants did not ask the Court to allow service of  
14 a third set of requests for production; nor did they ask permission to serve multiple sets of requests  
15 for admission. Defendants informed the Court that they felt Verigy's initial trade secret disclosure  
16 was not "reasonably particular," and Verigy agreed to amend the trade secret disclosure in light of  
17 discovery to date and to make it more specific. The parties were to use the time until the next  
18 CMC to serve this "limited discovery" and to meet and confer on an amended trade secret  
19 disclosure. No trial schedule or discovery cut-off has been set.

20 4. On March 17, 2008, I informed Mr. Pasquinelli, counsel for Defendants, that  
21 Verigy intended to serve an amended trade secret disclosure on April 14, 2008, and that Verigy  
22 was willing to meet and confer at Defendants' convenience once the amended disclosure had been  
23 served.

24 5. On March 25, 2008, Defendants served a third request for production of  
25 documents, despite the Court's Order that Defendants could serve only a "request for admissions  
26 and interrogatories." I requested that Defendants withdraw the third request, but Defendants'  
27 counsel refused to do so. Attached hereto as Exhibit B is a true and correct copy of Defendants'  
28 third set of requests for production.

1           6.       Attached hereto as Exhibit C is a true and correct copy of defendants' first set of  
2 requests for admission served upon my office on April 2, 2008. Verigy responded to the 65  
3 requests for admission on May 8, 2008.

4           7.       Attached hereto as Exhibit D is a true and correct copy of defendants' second set of  
5 requests for admission served upon my office at 7:20 p.m. on Sunday, April 13, 2008, the day  
6 before Verigy was to serve its Amended Trade Secret Disclosure (the "Second Set of Requests").  
7 This 72-page document contains 278 separate requests. Pursuant to stipulation, Verigy's response  
8 to the Second Set of Requests is due June 10, 2008.

9           8.       Requests for admission nos. 100 – 343 all relate to Verigy's initial trade secret  
10 disclosure, which defense counsel knew was to be amended the very next day, Monday, April 14.<sup>1</sup>  
11 None of these requests relate to whether the trade secrets listed in Verigy's initial trade secret  
12 disclosure constitute trade secrets.

13           9.       The Second Set of Requests was initially served unsigned, but Defendants  
14 remedied this error the next day. Attached hereto as Exhibit E is a true and correct copy of the  
15 email and signature pages sent to me on April 14, 2008.

16           10.      On April 14, 2008, I informed Mr. Pasquinelli Defendants that due to travel plans  
17 of a key Verigy employee, Verigy would need a few additional days to serve the amended trade  
18 secret disclosure, and that it would be served by April 18, 2008. Attached hereto as Exhibit F is a  
19 true and correct copy of the Amended Trade Secret Disclosure, served on April 18, 2008.  
20 Defendants have yet to approach Verigy with any alleged deficiencies in it, despite the Court's  
21 direction for the parties to attempt to resolve any issues prior to the May 23, 2008 CMC.

22           11.      Attached hereto as Exhibit G is a true and correct copy of the Initial Trade Secret  
23 Disclosure, served August 24, 2007.

24 \_\_\_\_\_  
25 <sup>1</sup> Given the Court's standing order regarding attaching letters between counsel to discovery  
26 motions, Verigy has attached only the crucial letters and describes the others in this declaration.  
27  
28

1  
2           12.     On Monday, April 28, 2008, the parties met and conferred regarding the Second  
3 Set of Requests for Admission and Defendants' Motion to Compel. The parties agreed to  
4 postpone the hearing on the motion to compel and to postpone the deadline for Plaintiff's response  
5 to the Second Set of Requests for Admission due to the amended trade secret disclosure. The  
6 parties attempted to negotiate a stipulation regarding the amended trade secret disclosure and these  
7 discovery disputes.

8           13.     Unfortunately, the parties were unable to reach agreement, as Defendants  
9 demanded that Plaintiff pay their attorneys fees incurred in drafting the motion to compel as well  
10 as their fees for drafting the proposed stipulation. Attached hereto as Exhibit H is a true and  
11 correct copy of Defendants' proposed stipulation, emailed to me on May 9, 2008. The stipulation  
12 also required that Plaintiff stipulate that Defendants did not misappropriate any of the withdrawn  
13 trade secrets.

14           14.     Verigy drafted a different stipulation. Attached hereto as Exhibit I is a true and  
15 correct copy of my May 9, 2008 email to Mr. Pasquinelli with the proposed stipulation.

16           15.     Defendants refused to accept Verigy's stipulation, as "it asserts no admissions or  
17 grants any rights that Defendants do not already posses[s]." Defendants maintained that payment  
18 of attorneys fees for the motion to compel and the stipulation were "critical." Attached hereto as  
19 Exhibit J is a true and correct copy of Mr. Pasquinelli's May 12, 2008 email response to my  
20 proposed stipulation.

21           16.     On May 13, 2008, the parties met and conferred by telephone conference pursuant  
22 to Rule 37-1 of the Northern District of California Civil Local Rules. Mr. Pasquinelli, on behalf  
23 of Defendants, refused to withdraw the Second Set of Requests. I offered to amend the stipulation  
24 to state that the withdrawn trade secrets were out of the case (without any provision that Verigy be  
25 allowed to later amend if discovery showed that Defendants had not been forthcoming), but Mr.  
26 Pasquinelli was unwilling to enter into any stipulation unless it included a stipulation that  
27 Defendants did not misappropriate any of the trade secrets in the Initial Trade Secret Disclosure.  
28 Attached hereto as Exhibit K is a true and correct copy of my email to Mr. Pasquinelli including

1 the amended stipulation. Counsel for the parties discussed the issues but were unable to reach any  
2 accord.

3 17. As 244 of the requests seek an admission that Verigy possesses “no documents”  
4 relating to misappropriation of the trade secrets listed in the Initial Trade Secret Disclosure, each  
5 of these 244 requests would require an extensive search of documents and email, requiring many  
6 hours spent investigating each of request for admission. This exercise would be costly and  
7 burdensome, given Verigy’s size and number of engineering employees who may have had  
8 communications with Mr. Romi Mayder.

9 18. Attached hereto as Exhibit L is a true and correct copy of Defendants Answer to  
10 Plaintiff’s Initial Complaint and Counter Claim, filed Sept. 9, 2007.

11 19. Attached hereto as Exhibit M is a true and correct copy of Defendants Amended  
12 Assertion of Defenses to Plaintiff’s Initial Complaint, filed March 25, 2008.

13 20. Attached hereto as Exhibit N is a true and correct copy of the confidential version  
14 of the Court’s February 29, 2008 order granting a preliminary injunction.

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct and that this declaration was executed this 13<sup>th</sup> day of May, 2008 at  
17 San Jose, California.

18 \_\_\_\_\_/s/  
Melinda M. Morton